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**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

MUR 5549

DATE COMPLAINT FILED September 28, 2004

DATE OF NOTIFICATION October 5, 2004

DATE ACTIVATED March 3, 2005

EXPIRATION OF STATUTE OF LIMITATIONS  
September 7, 2009

COMPLAINANT

Mark Brewer

RESPONDENTS

Stephen Adams  
Adams Outdoor Advertising, Inc

RELEVANT STATUTES AND  
REGULATIONS

2 U S C § 431(17)  
2 U S C § 441b(a)  
2 U S C § 441(d)(a)(3)  
11 C F R § 100 16(a)

INTERNAL REPORTS CHECKED

Disclosure Reports

FEDERAL AGENCIES CHECKED

None

MUR 5559

DATE COMPLAINT FILED October 8, 2004

DATE OF NOTIFICATION October 15, 2004

DATE ACTIVATED March 3, 2005

EXPIRATION OF STATUTE OF LIMITATIONS  
September 7, 2009

COMPLAINANT

Dennis Baylor

RESPONDENTS

Stephen Adams  
AOA Holding LLC

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Adams Outdoor Advertising LP<sup>1</sup>  
Adams Outdoor Advertising, Inc

**RELEVANT STATUTES AND  
REGULATIONS**

2 U S C § 431(17)  
2 U S C § 441a(a)(1)(A)  
2 U S C § 441b(a)  
11 C F R § 100 16(a)

**INTERNAL REPORTS CHECKED**

Disclosure Reports

**FEDERAL AGENCIES CHECKED**

None

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**RAD REFERRAL 05L-11**  
**DATE ACTIVATED March 22, 2005**

**EXPIRATION OF STATUTE OF LIMITATIONS**  
**September 3, 2009**

**RESPONDENT**

Stephen Adams

**RELEVANT STATUTES AND  
REGULATIONS**

2 U S C § 434(g)(2)(A)  
11 C F R § 100 19(d)  
11 C F R § 100 112  
11 C F R § 109 10(c)  
11 C F R § 109 10(e)(1)(i)

**INTERNAL REPORTS CHECKED**

Disclosure Reports

**FEDERAL AGENCIES CHECKED**

None

**I. INTRODUCTION**

**RAD Referral 05L-11 and MURs 5549 and 5559 involve advertising expressly  
advocating the re-election of President Bush that appeared on billboards owned or leased by**

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<sup>1</sup> The complaint used the name of Adams Outdoor Advertising LLP. Minnesota Secretary of State records, however, indicate that Adams Outdoor Advertising LLP is a limited partnership rather than a limited liability (footnote continued on next page)

1 business entities affiliated with Stephen Adams. According to FEC records, Adams filed a report  
2 of an independent expenditure on October 28, 2004, reflecting \$1 million in payment for the  
3 advertising. The RAD Referral alleges that this report was not filed timely. The MUR  
4 complaints allege that Adams did not personally pay for the advertising, but instead directed his  
5 affiliated business entities to absorb those costs, in violation of the prohibition on corporate  
6 expenditures or contributions. The complaint in MUR 5559 further alleges that if Adams did  
7 personally pay for the advertising, such payments would have exceeded his individual  
8 contribution limit. The complaint in MUR 5549 also alleges that the advertising on the  
9 billboards had inadequate disclaimers.

10 As discussed in more detail below, it appears that Adams made an individual independent  
11 expenditure, but failed to timely report it to the Commission. It also appears that the advertising  
12 originally contained incomplete disclaimers. Therefore, this Office recommends the  
13 Commission find reason to believe and enter into pre-probable cause conciliation with Adams  
14 regarding the reporting and disclaimer issues, and that the Commission find no reason to believe  
15 that Adams made an excessive personal contribution or that the other respondents made  
16 prohibited corporate contributions.

## 17 **II. FACTS**

### 18 **A. The Billboards**

19 Between September 7 and November 2, 2004, advertisements expressly advocating the  
20 reelection of President Bush appeared on billboards throughout Michigan, Pennsylvania,  
21 Wisconsin and South Carolina. Response at 9-10 and Attachments 6, 7, Aff. of Stephen Adams

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partnership, and as such the correct designation should be "LP" rather than "LLP." The correct name of this respondent appears in the case management system.

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1 ("Adams Aff"), Nov 12, 2004, at ¶ 13, Aff of Randall Romig ("Romig Aff"), Nov 12, 2004,  
2 at ¶¶ 18, 21-2 The advertising consisted of different displays of "catch phrase[s]" such as  
3 "Defending Our Nation," "It's About Our National Security," "A Nation Secure," "One Nation  
4 Under God," and "Boots Or Flip-Flops?" Response at 4 and Attachment 1 (emphasis in  
5 original) These catch phrases "appeared in white type on a blue background immediately above  
6 the campaign slogan 'BushCheney04' superimposed on the red and white stripes of the American  
7 flag" *Id* The advertising also originally carried a disclaimer that read, "Personal message paid  
8 for and sponsored by Stephen Adams" *Id* at 13-4

9 According to the complaints in MURs 5549 and 5559, the billboards on which the  
10 advertising appeared were owned or leased by business entities affiliated with Stephen Adams  
11 In his affidavit provided with the response, Adams admits that he owns AOA Holding Company,  
12 which in turn has a 76% interest in Adams Outdoor Advertising Limited Partnership, of which  
13 Adams Outdoor Advertising, Inc is the managing general partner (collectively "AOA") He also  
14 admits that "on or about June 1, 2004," he "hired AOA to design and implement" the multi-state  
15 outdoor advertising campaign in issue Adams Aff at ¶ 2<sup>2</sup>

16 After Adams hired AOA, Randall Romig, AOA's Vice President for Real Estate, who  
17 personally handled the advertising campaign, contacted Eric Rubin, an attorney whose law firm  
18 is general counsel to the billboard industry's association, for legal advice regarding the proposed  
19 advertising In a letter to Romig from Rubin dated June 10, 2004 (Attachment 4 to the response),

<sup>2</sup> Adams also states in his affidavit that he is Chairman of the Board of Directors of AOA, "but that office is a position of oversight and I am not involved in the day-to-day operations of AOA" Adams Aff at ¶ 3 Adams reportedly has numerous business interests other than AOA *Id* at ¶ 2, *School of Music get \$10 million*, Yale Bulletin & Calendar, Oct 25-Nov 1, 1999, at <http://www.yale.edu/opa/v28.n10/story1.html>, *History of AGI*, <http://www.affinitygroup.com/history1.cfm> SEC filings in 2001 corroborate the information provided by Adams in his affidavit concerning the structure of AOA, and we have located no other public information to the contrary (footnote continued on next page)

Rubin stated that pursuant to "Federal Election Laws," Adams would have to be personally responsible for all direct and indirect costs associated with the Advertisements "without offset or reimbursement by [AOA]" to avoid making any corporate contributions, and that such costs should be calculated by AOA at the rate it "would normally charge advertisers for comparable services." Further, the letter stated the advertising effort "must be truly an individual and personal effort by [Adams] in complete isolation from any political organization," and admonished Adams to avoid any communication or coordination with the Bush campaign or its agents, even after the advertising commenced. Romig forwarded the Rubin letter to Adams with an attached memorandum on or about June 19, 2004, Adams received it on or about June 21, 2004. Adams Aff at ¶ 7, response at 6 and Attachment 4. Adams avers that he "strictly followed Mr. Rubin's advice," including "no contact whatsoever with any federal candidate, candidate's authorized committee, or their agents, or any political party or its agents with regard to the advertising campaign." Adams Aff at ¶¶ 10 and 11 *see also* Romig Aff at ¶¶ 14, 15 (same affirmations).

According to Romig's affidavit, on July 6, 2004, he contacted attorney Rubin regarding the need for a disclaimer on the advertising, and Rubin recommended the text "Personal message Paid for and Sponsored by Stephen Adams," Romig forwarded this information via electronic mail to employees responsible for producing the advertisements. Romig Aff at ¶¶ 11-3, response at 15 and Attachment 9.

According to affidavits, Adams gave AOA a budget of \$1 million for the advertising campaign. Adams Aff at ¶ 4, Romig Aff at ¶ 17. He received several contracts from AOA.

1 between August 21 and August 27, 2004, which he signed and returned to Romig during the last  
2 week of August, 2004<sup>3</sup> Adams Aff at ¶ 12, Romig Aff at ¶ 21 A proposal dated July 23,  
3 2004, reflected a "grand total" for the advertising campaign of \$977,448 00 Response at  
4 Attachment 7, Adams Aff at ¶ 13, Romig Aff at ¶ 22 Adams avers he paid for the campaign  
5 entirely from his personal funds, and he decided to overpay by \$22,552, "just to be on the safe  
6 side," to make sure no AOA funds were used for any potential cost overruns Adams Aff at  
7 ¶ 13, response at 11, Romig Aff at ¶¶ 20, 22 According to the response, "internal AOA  
8 documents demonstrate conclusively that AOA charged Mr Adams the normal and usual charge  
9 for the services it provided to Mr Adams in connection with the advertising campaign"<sup>4</sup>  
10 Response at 12-3, *see also* Romig Aff at ¶¶ 16, 18-21 On September 7, 2004, the first day the  
11 advertising was scheduled to commence, Adams wired \$1 million to AOA as payment for the  
12 advertising campaign Adams Aff at ¶ 13, Romig Aff at ¶ 22, response at Attachment 8

13 Romig states he received a copy of the complaint in MUR 5549 on October 15, 2004  
14 from AOA's registered agent and was "stunned" to read the allegations regarding the inadequate  
15 disclaimers Romig Aff at ¶ 23 He immediately contacted Adams' personal attorney, who in  
16 turn contacted Adams *Id* at ¶ 24, Adams Aff at ¶ 14, response at 15 "[T]ogether they sought  
17 experienced FEC counsel," who informed them that the disclaimers were deficient *Id*

<sup>3</sup> Two of what appear to be such contracts from "Adams Outdoor Advertising of Lehigh Valley" were attached to the response as Attachment 6 One is a "Poster Display Contract" and the other is a "Bulletin Display Contract" These contracts were purportedly signed by AOA on August 24, 2004, but do not clearly show Adams' signature or the date he executed them These contracts, apparently provided as examples, were only for advertising in Pennsylvania totaling \$154,200

<sup>4</sup> No such "internal AOA documents" were attached to the response, but there is no evidence indicating that AOA did not charge Adams the usual and normal rates for the advertising campaign While we do not have any price sheets from AOA, rough calculations and comparisons with average rates listed on [www.billboard-ada.com](http://www.billboard-ada.com) show a general correlation with the rates AOA charged Adams, with some differences that likely are attributable to the individual markets in which the billboards were displayed

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1 Specifically, they were told that the disclaimers failed to state that the advertising was not  
2 authorized by the Bush campaign and that they failed to contain contact information for Adams  
3 Romig Aff at ¶ 26, Adams Aff at ¶ 15 Adams states he instructed that "immediate action" be  
4 taken to post revised disclaimers "as soon as possible and, if at all possible, before election day "  
5 Adams Aff at ¶ 17 Revised disclaimers stating "Paid for by Stephen Adams and not authorized  
6 by any candidate or candidate's committee Contact sadams@adamsoffice.net" were posted  
7 "[b]y November 2, 2004," at a cost to Adams of \$14,545 27 Romig Aff at ¶ 28, Adams Aff at  
8 ¶ 17, response at 16 <sup>5</sup>

9 B Reporting

10 Adams filed an FEC Form 5 disclosing his \$1 million payment as an independent  
11 expenditure on October 28, 2004 According to the referral from the Commission's Reports  
12 Analysis Division ("RAD"), RAD sent a Request for Additional Information ("RFAI") to Adams  
13 on November 12, 2004, noting among other things, that Adams had failed to file notice of the  
14 expenditure for the advertising campaign within forty-eight hours of an expenditure aggregating  
15 \$10,000 or more <sup>6</sup> 2 U S C § 434(g)(2)(A), 11 C F R §§ 100 19(d), 109 10(c)

16 On November 30, 2004, Adams' counsel responded to the RFAI by telephone and stated  
17 that Adams was given erroneous advice by previous counsel regarding filing an independent  
18 expenditure report and was not aware of the forty-eight hour filing requirement RAD instructed  
19 Adams' counsel to send a detailed written response to the RFAI concerning the expenditure On

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<sup>5</sup> No additional information regarding the exact date range of when the revised disclaimers were posted was indicated in the response or its attachments, nor did the response nor the attached documents make it clear whether the costs to correct the disclaimers were deducted from the overpayment for the Advertisements or if Adams paid for those costs in addition to the overpayment

<sup>6</sup> As the FEC Form 5 listed Adams' employer and occupation as "self-employed," the RFAI also requested further information regarding Adams' employer and occupation

December 8, 2004, RAD received correspondence from Adams' counsel addressing other issues in the RFAI, but failing to address the late filing of the independent expenditure report. RAD left a telephone message for Adams' counsel regarding this issue on February 25, 2005, but has received no further communications regarding it.

**III. ANALYSIS**

**A. There Were No Violations Concerning Corporate Expenditures and Individual Contribution Limits**

Based upon the available information, including sworn affidavits from Adams and Romig, and with no information to the contrary, it appears that AOA, acting as a vendor, charged Adams its "usual and normal" rates, *supra* n 4, and that Adams used only his personal funds for the advertising campaign. Documents purporting to show a wire transfer on September 7, 2004 of \$1 million from Adams' bank account to AOA's bank accounts were attached to the response as Attachment 8. As noted previously, Adams claims not only to have personally paid the entire costs of the advertising campaign at the usual and customary rates, but to have deliberately overpaid for it by more than \$20,000 to ensure no AOA funds were used for any potential "unusual indirect costs" or overruns, and "to ensure that AOA did not inadvertently make an in-kind contribution to the Bush-Cheney '04 campaign." Response at 8-13 and Attachment 4, Adams Aff at ¶¶ 7-9, 13, Romig Aff at ¶¶ 7, 16, 20-22. Because AOA appears to have charged Adams its "usual and normal" charge, it does not appear to have made a corporate expenditure. See 11 C.F.R. § 100.111(e)(1). Accordingly, this Office recommends that the Commission find no reason to believe that Stephen Adams, Adams Outdoor Advertising, Inc., Adams Outdoor Advertising LP, or AOA Holding LLC violated 2 U.S.C.



1     § 441b(a) by making or consenting to prohibited corporate expenditures, and close the file with  
2     respect to all of these respondents except Stephen Adams

3             Further, it appears that Adams made an "independent expenditure" in paying for the  
4     advertising campaign 2 U S C § 431(17), 11 C F R § 100 16(a) Adams concedes there is no  
5     dispute that the advertising expressly advocated the reelection of President Bush Response at 4  
6     Both Adams personally, and Romig as the AOA employee principally responsible for  
7     implementing the advertising campaign, aver that the advertising campaign was designed and  
8     implemented "without any contact whatsoever" with any federal candidate, candidate's  
9     authorized committee or its agents, or any political party or its agents Again, we have no  
10    information to the contrary As limits on individual campaign contributions do not apply to  
11    independent expenditures, this Office recommends that the Commission find no reason to believe  
12    that Stephen Adams violated 2 U S C § 441a(a)(1)(A) by making excessive contributions Due  
13    to the fact that MUR 5559 alleged only violations of 2 U S C §§ 441a(a)(1)(A) and 441b(a), this  
14    Office recommends that the MUR 5559 file be closed

15             B     Adams Failed to Timely File the Independent Expenditure Report

16             "A person     that makes or contracts to make independent expenditures aggregating  
17     \$10,000 or more at any time up to and including the 20<sup>th</sup> day before the date of an election shall  
18     file a report describing the expenditures within 48 hours " 2 U S C § 434(g)(2)(A), 11 C F R  
19     § 109 10(c) The report must be made either on an FEC Form 5 or by signed statement if the  
20     person is not otherwise required to file electronically, and received by the Commission by "11 59  
21     p m Eastern Standard/Daylight Time on the second day following the date on which a  
22     communication is publicly distributed or otherwise publicly disseminated " 11 C F R

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§ 109 10(c) Assuming that the advertising campaign commenced as scheduled on September 7, 2004, *see* Romig Aff at ¶ 22, Adams was required to file his independent expenditure report such that the Commission received it no later than 11 59 p m EST on September 9, 2004. Thus, Adams' FEC Form 5 filing of his \$1 million expenditure on October 28, 2004 was more than one-and-a-half months late. Accordingly, this Office recommends that the Commission find reason to believe that Stephen Adams violated 2 U S C § 434(g)(2)(A).

**C     The Advertisements Contained Inadequate Disclaimers**

Disclaimers on communications paid for by independent expenditures are required and must "clearly state the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication" and that the communication was not authorized by any candidate or committee. 2 U S C § 441d(a)(3), 11 C F R § 109.11. The response concedes that the advertising in question originally did not contain Adams' permanent street address, telephone number or World Wide Web address and did not state that the advertisements were not authorized by any candidate or candidate's committee. Therefore, this Office recommends that the Commission find reason to believe that Stephen Adams violated 2 U S C § 441d(a)(3).

**III.     DISCUSSION OF CONCILIATION AND CIVIL PENALTY**

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**IV. RECOMMENDATIONS**

- 1 Open a MUR with respect to RAD 05L-11, and merge the new MUR into MUR 5549
- 2 Find reason to believe Stephen Adams violated 2 U S C § 434(g)(2)(A)
- 3 Find reason to believe Stephen Adams violated 2 U S C § 441d(a)(3)
- 4 Find no reason to believe Stephen Adams violated 2 U S C § 441a(a)(1)(A) or 2 U S C § 441b(a)
- 5 Find no reason to believe Adams Outdoor Advertising, Inc , Adams Outdoor Advertising, LP, or AOA Holding LLC violated 2 U S C § 441b(a), and close the file as to these respondents
- 6 Close the file in MUR 5559
- 7 Approve the attached Factual and Legal Analysis
- 8
- 9
- 10 Approve the appropriate letters


Lawrence H Norton  
General Counsel


5/17/05  
Date

BY

Lawrence L. Calvert Jr  
Deputy Associate General Counsel  
for Enforcement

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Susan L. Lebeaux  
Assistant General Counsel

  
J. Cameron Thumber  
Attorney

**Attachments**

- 1  
2 Factual and Legal Analysis

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